APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

October 17, 2002, Decided

PINION:

ne petition for rehearing by the panel filed by appellants has
een considered by the court and is denied.

October 17, 2002

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

[Filed September 17, 2002]

Nos. 01-2538/2629

ALLIED SYS. v. TEAMSTERS AUTO. TRANSP. CHAUFFEURS, DEMONSTRATORS & HELPERS, Local 604

Before BOWMAN, RILEY, and MELLOY, Circuit Judges.

OPINION:

RILEY, *Circuit Judge.*

Appellants, Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers, Local 604, Terry Manion (Manion), and John Thyer (Thyer) (collectively, Local 604), appeal a jury verdict in favor of Allied Systems, Ltd. (Allied) and Transport Support, Inc. (TSI) (collectively, Allied-TSI). Allied-TSI operates automobile transportation businesses throughout the United States and Canada. Local 604 is the recognized exclusive representative for Allied-TSI's employees at the Wentzville, Missouri, terminal. Allied-TSI sued Local 604 for breach of the collective bargaining agreement governing the relationship between the parties. The district court granted temporary then preliminary injunctive [3] relief prohibiting Local 604 from conducting a picket line at Allied-TSI's in-bound rail yard main gate, finding the picketing was a disguise for grievances subject to arbitration under the parties' agreement and was effectively a work stoppage. A jury thereafter awarded Allied-TSI $81,000 in damages.

Local 604 appeals the district court's grant of injunctive relief to Allied-TSI before trial, the admission and exclusion of evidence at trial, and the failure to reduce the damage award. Allied-TSI cross-appeals, arguing the district court erred in not awarding attorney fees. We affirm the district court in all respects.

I. BACKGROUND

The parties conducted business at the terminal of the General Motors (GM) plant in Wentzville, until December 1999 when GM transferred Allied-TSI's work at the terminal to another carrier. At the time of suit, TSI performed releasing and yard functions at numerous GM plants including the Wentzville plant. Allied is a motor carrier service company that delivers new and used automobiles by truck around the United States and Canada. Allied and TSI are wholly owned by Allied Automotive Group. Local 604 is affiliated with the International Brotherhood of Teamsters (IBT). Thyer and Manion, respectively, were the Secretary-Treasurer and President of Local 604.

Local 604 and Allied-TSI are signatories to the National Master Automobile Transporters Agreement (NMATA) which contains a mandatory arbitration clause and requires arbitration of labor disputes before unions engage in work stoppages or strikes. The NMATA provides in Article 7, Section 1:

> The parties agree that all grievances and questions of interpretation arising from the provisions of this Agreement shall be submitted to the grievance procedure for determination.
>
> The Unions and the Employers agree there shall be no strike, tie-up of equipment, slowdown or walkout on the part of the employees, nor shall the Employer use any method of lockout or legal proceeding without first using all possible

means of a settlement, as provided for in this Agreement, of any controversy which might arise.

The NMATA also requires 72 hours written notice before a work stoppage.

On October 7, 1999, Thyer called a strike, pulled all Local 604 members off the job, and set up picket lines. Thyer alleged the reason for calling the strike was that Allied's terminal manager, Sam Bledsoe (Bledsoe), refused to meet with him earlier that day concerning a dispatch issue, in violation of the contractual grievance procedure. Trial testimony showed Bledsoe did not refuse to meet with Thyer, but instead requested that Thyer first make an appointment.

Trial evidence suggested an improper purpose motivated Local 604 to institute the October strike. In the month before the October strike, Lowery Gray (Gray), Local 604's union steward, was discharged for threatening to kill one of Allied-TSI's administrative employees. After procedural questions arose concerning Gray's termination, Allied-TSI rescinded the discharge and ordered a second discharge a day later for separate allegations of assault and destruction of company property. In discussing this matter with an Allied-TSI executive, Thyer threatened to shut Allied-TSI down if it took any action with respect to Gray. Gray was discharged [6] nonetheless on September 27. Local 604 filed a grievance on Gray's behalf and hired him as a business agent, allowing Gray continued access to the terminal.

On October 4, a hearing was held on Gray's dismissal in accordance with the NMATA provisions. On October 6, Allied-TSI obtained a restraining order preventing Gray from entering Allied-TSI's premises, but the order was promptly dissolved for lack of proper notice. On October 7, Thyer and Gray returned to the terminal and Thyer announced he was

shutting the terminal down and pulled all Allied-TSI employees off the job.

No provision under the NMATA authorized the October strike, nor did Local 604 provide the 72-hour written notice required by the NMATA. Allied-TSI sent written notice to Local 604 and IBT on October 7 of its willingness to meet, but received no response. After the strike began, Allied-TSI filed for injunctive relief against Local 604. Before the hearing on the motion for temporary restraining order, Local 604 agreed to terminate the strike without discussing the substance of the dispatch problem that had allegedly led to the strike.

The failur to provide Allied-TSI with the contractually required 72-hour advance notice of the strike damaged the company's operations. Allied-TSI was unable to schedule an alternative dispatcher, creating a backlog in automobiles needing to be transported. The backlog lasted for the remainder of the year and forced GM to divert vehicles away from the Wentzville terminal.

In December 1999, Allied-TSI obtained a new state court injunction barring Gray from entering the Wentzville terminal. Local 604 received a copy of the injunction on either December 20 or 21. On December 21, 1999, Local 604 established a picket line at the in-bound rail yard serviced by the Wentzville terminal. Local 604 notified Allied-TSI of the picketing in advance. The picketing continued for three days. Local 604 claimed this was permissible area standards picketing, protesting substandard wages and benefits against a third party, the St. Louis Auto Auction, which operated at the same terminal as Allied-TSI.

The picket line wa located where Allied-TSI employees were required to enter for work. Treating the picket line as a legitimate area standards picketing, Allied-TSI set up a

reserve gate where Allied-TSI employees could enter and exit without having to cross the picket line. The reserve [8] gate was created to allow Local 604 to picket St. Louis Auto Auction without interfering with the business of Allied-TSI. When asked to honor the reserve gate, Thyer stated that he would be "shutting the entire yard down." Local 604 then refused to honor the reserve gate and the entire Wentzville terminal was shut down. No Allied-TSI employees crossed the picket line to perform normal duties at the rail yard.

Allied-TSI sent letters to Local 604 and IBT requesting that the December work stoppage be terminated and inquiring whether it was an IBT authorized strike, but no response was received. Allied-TSI obtained a temporary restraining order on December 23, and a preliminary injunction on December 29, prohibiting Local 604 from engaging in the work stoppage in violation of the NMATA's mandatory grievance and arbitration provisions. Local 604 ended the strike. The district court ordered Local 604 and Allied-TSI to submit to arbitration.

Allied-TSI claims the December work stoppage significantly damaged business by increasing the severity of the already existing backlog from the October work stoppage, causing GM to divert more vehicles, and decreasing the efficiency of business generally. Allied-TSI sought damages sustained as a result of Local 604's breach of the NMATA and also requested a permanent injunction prohibiting Local 604 from engaging in further work stoppages, strikes, tie-ups, or picketing in violation of the NMATA. After a jury trial, the district court granted Allied-TSI's motion to dismiss its request for permanent injunctive relief on the ground of mootness.

At trial, Allied-TSI offered into evidence the temporary restraining order and preliminary injunction, which were partially read to the jury. Local 604 made no objection to this

admission of the orders. The union instead requested that the district court read the jury more of one order. Local 604's request was sustained and the full document was admitted into evidence.

Before trial, Allied-TSI filed a motion in limine to exclude from evidence all written decisions of all arbitrators. The district court deferred ruling on the motion, noting it was "unable at this time to determine whether the issues regarding the arbitrated disputes and grievances will be relevant," and it would "make rulings at the time such matters are presented." The court did prohibit any mention of the matters in voir dire and in opening statements. Local 604 made no attempt to offer into evidence the Board of Arbitration's decisions pursuant to the district court's December order that the parties submit to arbitration. Local 604 offered the Board of Arbitration's written decisions concerning Gray's termination, and Allied-TSI objected. The district court sustained the objection and excluded the arbitrators' decisions due to (1) the difference in opinion as to the meaning of the documents, (2) the likelihood the documents would "be confusing to the jury" and would force "the jury [to] interpret these legal documents," and (3) the risk a "series of mini-trials" could occur. The court allowed witness testimony as to Gray's violent proclivities, the state court restraining order enjoining Gray from entering the premises, and the general outcome of the arbitration.

The district court permitted Allied-TSI's internal accountant and Vice President of Internal Audit, Harpal Grover (Grover), to testify as a lay witness regarding Allied/TSI's damages. Grover was not present during the work stoppage, but testified as to his personal knowledge of the company's books and financial status.

A jury awarded $81,000 in damages to Allied-TSI on February 16, 2001. The district court denied Local 604's

motion for a new trial and denied Allied-TSI's motion for attorney fees.

II. DISCUSSION

We first address Local 604's contentions concerning the restraining order and preliminary injunction, then the evidentiary issues, and finally the damages award. We will conclude with Allied-TSI's motion for attorney fees.

A. Temporary Restraining Order and Preliminary Injunction

Local 604 delayed its appeal of the temporary restraining order and preliminary injunction until after the district court issued a final judgment, instead of bringing an interlocutory appeal as a matter of right. A party may choose to pursue an interlocutory appeal of a district court's grant of preliminary injunctive relief or to wait until after a final judgment has been rendered. *Sierra Club v. Robertson*, 28 F.3d 753, 756 n.3 (8th Cir. 1994).

Federal appellate jurisdiction extends only to actual cases or controversies still in existence at the time of appellate review. U.S. Const. art. III, § 2; *Ashley, Drew & N. Ry. Co. v. United Transp. Union*, 625 F.2d 1357, 1361 (8th Cir. 1980). After the district court enjoined the December 1999 work stoppage, GM transferred all of Allied-TSI's work at the Wentzville terminal to another carrier. Allied-TSI no longer does business with Local 604 at the Wentzville terminal. We need not explore the propriety of the temporary restraining order and preliminary injunction enjoining the December 1999 picketing because the issue has become moot "through the passage of time and the occurrence of irrevocable events." *Lebanon Chem. Corp. v. United Farmers Plant Food, Inc.*, 179 F.3d 1095, 1099 (8th Cir. 1999) (quoting McFarlin v. Newport Special Sch. Dist., 980 F.2d 1208, 1210 (8th Cir. 1992)).

B. Evidentiary Rulings

We will not set aside a jury verdict unless the district court clearly and prejudicially abused its discretion in determining whether or not to admit evidence. Lovett *v. Union Pac. R.R. Co.*, 201 F.3d 1074, 1080 (8th Cir. 2000).

Local 604 contends the temporary restraining order and preliminary injunction are not moot because Allied-TSI read portions of both documents to the jury, and the union believes this evidence prejudiced the rights of Local 604 and constituted plain error. However, Local 604 made no objection to the inclusion of this evidence at trial. Local 604 asked the district court to read more of one of the orders. The union also referred to this evidence throughout the trial. Local 604 had the opportunity to present the district court with a proposed jury instruction to clarify the meaning of these preliminary remedies—but did not.

Because of Local 604's failure to object to this evidence, we only review for plain error. *Chem-Trend, Inc. v. Newport Indus., Inc.*, 279 F.3d 625, 629 (8th Cir. 2002). Our review under the plain error standard is "narrow and confined to the exceptional case where error has seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *Id.* (citation omitted). We will only reverse if the error prejudiced the substantial rights of Local 604 and would result in a miscarriage of justice. *See id.* We find no miscarriage of justice and no plain error.

Local 604 also argues the district court abused its discretion in excluding from evidence two decisions issued by the Board of Arbitration in response to the district court's order requiring the parties to submit to arbitration. However, Local 604 never offered the decisions. The district court denied Allied-TSI's motion in limine to exclude this evidence, opting to "make rulings at the time such matters

were presented." Local 604's failure to offer the Board's decisions cannot be characterized as plain error on the part of the district court. *See Dupre v. Fru-Con Eng'g Inc.*, 112 F.3d 329, 337 (8th Cir. 1997).

After carefully scrutinizing the record, the only arbitration decisions we find Local 604 offered were documents relating to the dismissal of Gray. The district court correctly determined the admission of the arbitrators' decisions as to Gray would confuse the jury and waste time by focusing the jury's attention on irrelevant issues.

The district court denied Local 604's motion to exclude the statements concerning Gray's conduct and termination, which we review for a clear abuse of discretion. *See Spencer v. Stuart Hall Co.*, 173 F.3d 1124, 1130 (8th Cir. 1999). Local 604 argues evidence of Gray's threats of violence against Allied-TSI employees was not relevant evidence under Rules 401 and 402. Evidence of Gray's termination and Local 604's reaction to the termination is probative of the true reason for the October and December work stoppages. This evidence was relevant to assist the jury in determining whether the work stoppages were a breach of the NMATA. Accordingly, the district court did not abuse its discretion in admitting this evidence.

Local 604 contends it was also a clear abuse of discretion for the district court to permit Grover, the Vice President of Internal Audit at Allied-TSI, to testify as to damages under Rule 701 of the Federal Rules of Evidence. Grover had not been disclosed as an expert before trial. Local 604 argues Grover used accounting principles and methods to quantify damages, and therefore impermissibly used specialized knowledge, which can only be used by expert witnesses. Grover's testimony was limited to his firsthand knowledge, obtained as the bookkeeper and record-keeper at the Wentzville terminal and from a field audit he conducted

within weeks of the first work stoppage. "Personal knowledge or perception acquired through review of records prepared in the ordinary course of business, or perceptions based on industry experience is a sufficient foundation for lay opinion testimony." [16] *Burlington N. R.R. Co. v. Nebraska*, 802 F.2d 994, 1004-05 (8th Cir. 1986). The opinion testimony of an officer of a business as to value or projected profits or as to damage to the business, without qualifying the officer as an expert, "is admitted not because of experience, training or specialized knowledge within the realm of an expert, but because of the particularized knowledge that the witness has by virtue of his or her position in the business." Fed. R. Evid. 701, advisory committee's note (2000). We find no abuse of discretion in the district court's inclusion of Grover's testimony.

C. Damage Award

Local 604 also argues the damage award was excessive. We will reverse an award of damages only if it is "shocking, monstrous, or constituted a plain injustice." *Young v. City of Little Rock*, 249 F.3d 730, 736 (8th Cir. 2001) (citation omitted) (alteration in original). The jury's damage award of $81,000 against Local 604 was reasonable and rationally connected to evidence presented at trial. Allied-TSI presented evidence that the October work stoppage caused a backlog of vehicles which was then exacerbated by the December work stoppage. [17] Allied-TSI also put forth evidence of its attempts to mitigate damages by reducing the backlog. The award was not shocking, monstrous or a plain injustice.

D. Attorney Fees

We review the district court's denial of Allied-TSI's motion for attorney fees for an abuse of discretion. *American Fed'n of Musicians v. St. Louis Symphony*, 203 F.3d 1079, 1081 (8th Cir. 2000). Allied-TSI maintains the district court

abused its discretion in not awarding attorney fees as an element of damages, because Allied-TSI incurred legal costs in stopping the improper work stoppage and strike. Attorney fees are typically not recoverable as an element of damages in the absence of statutory authority, a contractual agreement to award attorney fees, or an equitable determination that a party acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Id.*; *see Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 24771, 44 L. Ed. 2d 141, 95 S. Ct. 1612 (1975). The Supreme Court has expressly rejected Allied-TSI's argument that it may recover attorney fees from prior litigation as an element of damages. *See Summit Valley Indus. Inc. v. Local* 112, United Bd. of Carpenters & Joiners of Am., 456 U.S. 717, 718-19 & n.1, 725-27, 72 L. Ed. 2d 511, 102 S. Ct. 2112 (1982) (expressly rejecting analysis of *Associated Gen. Contractors of Minn. v. Constr. & Gen. Laborers Local No.* 563, 612 F.2d 1060, 1061 (8th Cir. 1979), which characterized award of attorney fees from prior related lawsuit as compensatory damages). The district court did not abuse its discretion in denying Allied-TSI's motion for attorney fees.

III. CONCLUSION

The appeal of the temporary restraining order and preliminary injunction has become moot through the passage of time and the occurrence of irrevocable events. The district court did not abuse its discretion in ruling on the evidentiary matters or in refusing to award attorney fees. The damage award was reasonable. Accordingly, we affirm.

APPENDIX C

UNITED STATES DISTRICT COURT EASTERN DISTRICT FOR MISSOURI EASTERN DIVISION

Cast No. 4:99CV01589 ERW

ALLIED SYSTEMS, LTD., *et al.*,

Plaintiffs,

vs.

TEAMSTERS AUTOMOBILE TRANSPORT CHAUFFEURS, DEMONSTRATORS, and HELPERS LOCAL UNION No. 604, *et al.*,

Defendants.

TEMPORARY INJUNCTION

In accordance with the memorandum and Order of this Court, which was filed on this date and incorporated herein,

IT IS HEREBY ORDERED that Defendant Local Union No. 604 and all members and persons of Local union 604, specifically including those who are employed by Plaintiffs at their Wentzville, Missouri facilities shall be enjoined and restrained as follows:

A. From engaging in any strike, work stoppage or concerted refusal to perform the normal duties of their employment with Plaintiffs in breach of the collective bargaining agreement between parties.

B. From concertedly refraining from performing their services at Plaintiffs' 655 Parr Road, Wentzville, Missouri terminal facilities and the yards serviced by said operation in breach of the collective bargaining agreement between the parties.

C. From inducing any of Plaintiffs' employees to engage in a strike, work stoppage or concerted refusal to perform their services in breach of the collective bargaining agreement between the parties.

D. From engaging in picketing or mass assembly at Plaintiff's aforementioned facilities or operations in support of any strike or work stoppage in breach of the collective bargaining agreement between the parties;

IT IS FURTHER ORDERED that the terms of this Injunction shall remain in effect until the parties have fully arbitrated the grievances filed by defendant Local Union and specified in Plaintiffs' Exhibit No. 6 with attachments, pursuant to the terms of the parties' collective bargaining agreement.

Dated this 29th day of December, 1999.

E. RICHARD WEBBER
E. Richard Webber
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OC MISSOURI
EASTERN DIVISION

Cast No. 4:99CV01589 ERW

ALLIED SYSTEMS, LTD., *et al.*,

Plaintiffs,

v.

TEAMSTERS AUTOMOBILE TRANSPORT CHAUFFEURS, DEMONSTRATORS, AND HELPERS LOCAL *Union* NO. 604, *et al.*,

Defendants.

MEMORANDUM AND ORDER

This matter is before the Court upon plaintiffs' request for a preliminary injunction [document #16]. Plaintiffs request that the Court enter an order retraining defendants from further picketing at the Norfolk and Southern in-bound rail facility. Defendants argue that such picketing is legal "information picketing," and that this Court may not grant an injunction prohibiting such conduct. Plaintiffs maintain that its members are engaged in area standards picketing upon the grounds where employees of the St. Louis Auto Auction are now performing work for substandard wages that formerly was conducted by defendants membership, and that the Court's Temporary Restraining Order entered on December 23, 1999, after a hearing should be dissolved. Plaintiffs assert that there are underlying issues that are arguably grievable encompassed within the contractual grievance procedure and that a preliminary injunction should be entered to permit the

parties to arbitrate their grievances and prevent defendants from engaging in activity at the rail yard, which is, in fact, not informational picketing, but rather work stoppage activity disguised as lawful activity, all in violation of the collective bargaining agreement.

In determining whether a party is entitled to a preliminary injunction, this Court is guided by the following factors set forth by the Eighth Circuit in *Dataphase Systems, Inc. v. SL Systems, Inc.*, 604 F. 2d 109, 114 (8th Cir. 1981): "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." In addition, the Court must also be mindful in a case of this nature of the established precedent regarding issuance of a preliminary injunction in cases involving relationships between management and unions. While Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, limits this Court's ability to enjoin strikes and work stoppages, Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, provides this Court with authority to enjoin such actions if necessary to ensure compliance with a provision in a collective bargaining agreement requiring that the parties arbitrate their grievances. *See generally Kansas City Southern Transport Co., Inc. v. Teamsters Local Union # 41*, 126 F. 3d 1059, 1064-65 (8th Cir. 1997) (citing, inter alia, *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) for the proposition that the Supreme Court has decided that "in order to accommodate the anti-injunction provisions of Norris-LaGuardia to the subsequently enacted provisions of § 301(a) [of the Labor Management Relations Act] and the strong federal policy favoring arbitration, it was essential to recognize an exception to the anti-injunction provisions for cases in which the employer sought to enforce the union's contractual obligation to arbitrate grievances rather than to strike over them"). This

narrow exception for the issuance of a "*Boys Market*" injunction is consistent with the congressional policy in favor of the arbitration of labor disputes. *See generally Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960): *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

Allied Systems Ltd. v. Teamsters National Automobile Transporters Industry Negotiating Committee Local union 327, 179 F. 3d 982,988,989 (6th Cir. 1999), cited by defendants, recognized that a *Boys Markets* injunction is only to be granted when "it clearly appears to the trial judge that the dispute which underlies the strike is subject to a no-strike obligation [internal citations omitted]." The facts of the case are otherwise distinguishable. That case concluded properly in its holding under the facts of the case, that a *Boys Markets*, injunction is proper only when a clear and undisputed contractual duty exists to arbitrate the dispute. Here, there is a no-strike clause in the collective bargaining agreement and there is a clear and undisputed duty to arbitrate the underlying dispute(s).

In *Kansas City Southern Transport Co., Inc., v. Teamsters Local Union #41*, the Eighth Circuit addressed this aspect of the *Boys Markets* issue as follows:

> Under the *Boys Markets* exception, a District Court entertaining an action under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, may not grant injunctive relief against concerned activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the

> contract does have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether the issuance of an injunction would be warranted under the ordinary principles of equity-whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance. The Supreme Court further refined the *Boys Market exception in Buffalo Forge Co. v. United Steelworkers of Am. AFL-CIO*, 428 U.S. 397, 406, 96 S. Ct. 3141, 3147, L.Ed.2d 1022 (1976), and held that it applies only where the underlying dispute, that which precipitated the strike, is subject to binding arbitration under the collective bargaining agreement.

126 F.3d 1059, 1064 (8th Cir. 1997) (internal citations and brackets omitted).

For these reasons, the Court is faced with determining whether defendants' picketing activities in this matter are concerned with matters that are subject to the grievance machinery within the parties' collective bargaining agreement. Plaintiffs have argued that the picketing by defendants in this matter, which defendants claim is aimed at a third-party, the St. Louis Auto Auction, concerns matters subject to arbitration pursuant to Section 33 of the collective bargaining agreement between the parties. However, the court does not find that Section 33 could govern defendants' "informational picketing" against a third-party, because that Section clearly prohibits the employer from engaging in "contracting and double breasting practices under which Employer permits persons other than Employer's bargaining unit employees to perform Carhaul Work . . . ." The

uncontradicted testimony throughout the hearing in this matter established that the third-party subject to picketing from defendants is not an arm of plaintiffs, and that plaintiffs are not engaging in "double breasting practices" through the third-party.

Having reached this conclusion does not end the matter, however, for the court finds from the evidence that defendants' picketing in this matter was, in reality, not "informational picketing" as represented in their papers and a the hearings in this matter, but instead, an orchestrated plan to stop work at the rail yard. Defendants' Exhibits F and G are letters written by Daniel Sandy on December 23, 1999. One is directed to John Thyer, Secretary-Treasurer and Business Representative of defendant Automobile Transport Chauffeurs, Demonstrators and Helpers Teamsters Local 604 who has authority to call a strike. Mr. Sandy's letter states, "[O]n December 22, 1999 at approximately 3:00 p.m. Mr. Dan Sandy, Assistant Vice President of Industrial Relations for Allied systems, Ltd. informed Mr. Manion [president of Local 604] and yourself that the main gate of the facility was restricted to Allied Systems, Ltd. and Transport Support, Inc. employees only. He was informed by your and Mr. Manion that 'you were shutting the entire yard down.'" Exhibit G, addressed to Mr. Doc Conder, Local Union 41, has similar language. Mr. Thyer, who testified at the Hearing on December 23, 1999 and at the Hearing on December 28, 1999, did not deny the allegations. At the Hearing on December 23, 1999 he testified that the informational picket was set up at a location away form the entrance gate to the rail yard, but that he considered it a picket line at the gate, and as drivers came by the picket area, asking questions, their inquiries were answered and drivers would not enter the yard. Defendants' counsel noted, "these parties don't get along too well, and it's not all the union's fault. In fact, what Mr. Thyer's testimony is that frankly the mend are darn peeved and they've always been peeved."

Plaintiffs cite the Court to *Westmoreland Coal Co., Inc. v. International Union, United Mine Workers of America*, 910 F.2d 130, 138 (4th Cir. 1990) which noted that pickets used for the "purpose of disguising the true nature" of a work stoppage may be evidence that not only supports a finding that a Union may be violating its obligation to arbitrate disputes pursuant to a collective bargaining agreement, but that the Union is aware that such picketing, when stripped of its disguise, would violate the collective bargaining agreement. The Court believes that the evidence indicates that that is the case in this matter. Defendants have expressed dissatisfaction in the part over grievances that the parties have resolved either through settlement or otherwise through the grievance procedure. This dissatisfaction was readily apparent through the lengthy testimony of Mr. Thyer, the only person who claims to be able to call for a strike or work stoppage on behalf of defendant Union. In regards to one of the grievances, defendants claim that plaintiffs owe liquidated damages in addition to damages already paid by plaintiffs. In addition, the defendant Union has attempted to pursue a grievance on behalf of Lowery Gray, a former Union steward who was terminated by plaintiffs. The work stoppages in this matter came shortly after entry of a court order from a state court prohibiting Mr. Gray from coming near plaintiffs' premises because of threats made to personnel on the premises.

As noted, the court has concluded that Mr. Thyer's testimony in regards to the "informational picketing" in this matter indicated that it is not limited to such picketing directed at a third-party. He testified that the picketing was taking place at an area near an entrance for employees of plaintiffs. Employees of plaintiffs who approached the picket line refused to cross it. While Mr. Thyer denied that the Union was stopping such employees from actually entering the premises, the Court finds his testimony lacking in credibility. Throughout the hearing the Court did not find

any evidence indicating that any employee of plaintiffs entered the premises while the picketing was ongoing. Instead, the Court finds that the evidence establishes that the picketing in this matter was designed to place economic pressure on plaintiffs for plaintiffs' actions in regards to past grievances, settlements, and a personnel decision.

Concluding, the Court is convinced from hearing the testimony adduced at the hearings in this matter that the alleged "informational picketing" in this matter is merely a disguise for defendants' picketing of plaintiffs for actions allegedly taken by plaintiffs that are subject to the grievance procedure provided in the parties' collective bargaining agreement.

The next issue is whether the court may grant prospective injunctive relief. *Westmoreland Coal Company* is instructive concerning the approaches various circuits have taken in addressing that proposition. That court's conclusion, well-reasoned, is "[t]hus, if a future breach is threatened, prospective relief is appropriate. We are not inclined to restrict the authority of district courts to grant the equitable relief of narrowly tailored prospective injunctions in situations where there is a reasonable probability that future breaches will be committed, even in situations when on pattern emerged."" *Id.* at 138. Here, the action of defendants constitutes a pattern of behavior of initiating work stoppage actions rather than complying with the clear language of the collective bargaining agreement to arbitrate grievances. Plaintiffs were here in October seeking relief, which the parties resolved after appearing for a hearing. Granting of prospective equitable relief is appropriate in this case.

The Courts finds that the work stoppage arose over arbitrable disputes not framed in the exchange of correspondence between the parties on December 27, 1999; as set forth in plaintiffs' Exhibit 6, and that those grievances are the underlying disputes which caused the work stoppage.

Notwithstanding the Norris-LaGuardia Act, injunctive relief under *Boys Markets* in this case is appropriate. The work stoppage action of defendants is, in fact, over grievances both parties are contractually bound to arbitrate and plaintiffs are ordered to arbitrate all issues, including case no. 51, as a condition of obtaining an injunction.

The Court further finds that plaintiffs are threatened with irreparable harm by defendants. Plaintiffs are threatened with the likelihood of losing its contract with General Motors, or of having those contract benefits substantially curtailed at this and other plants if defendants are permitted t continue the work stoppage activity. In balancing the relative harm between the parties, clearly the harm to plaintiffs is very substantial, while the harm to defendants is minimal. One of defendant's complaints is that they have been unable to get key issues resolved because plaintiffs will not expeditiously arbitrate grievances. Under the Court's order, expeditious arbitration shall occur at the national level as stipulated by plaintiffs.[1] The Court further finds that there is a high probability that movant will succeed on the merits, and that the public interest will be served if equitable relief is granted to plaintiffs. *See Dataphase Systems, Inc.*, 640 F.2d at 114.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' request for a preliminary injunction [Document #16] is GRANTED.

---

[1] Plaintiffs do not agree to arbitrate case no. 51; however, the Court orders that case and the other cases hereinbefore referenced be arbitrated. *See Kansas City Southern Transport Company, Inc.*, 126 F.3d at 1064 (whether or not a company is bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the court).

An appropriate Injunction shall accompany this Memorandum and Order.

Dated this 29th day of December, 1999.

/s/ E. Richard Webber
E. Richard WEBBER
United States District Judge

APPENDIX E

29 U.S.C. § 104

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

APPENDIX F

29 U.S.C. § 157

§ 157. Rights of employees as to organization, collective bargaining, etc.

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [29 USCS § 158].

APPENDIX G

29 U.S.C. § 185

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments. Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction. For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process. The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency. For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.